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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Wayne P. Franco	<p><b>37 C.F.R. § 1.8 Certificate of Mailing</b>            I hereby certify that this correspondence is today being deposited with the U.S. Postal Service in an envelope with appropriate postage affixed thereto and addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.</p> <p>May 28, 2003.</p> <p><i>[Signature]</i>            Jean McCue</p>
Serial No.:	09/828,330	
Filing Date:	April 6, 2001	
Group Art Unit	1647	
Examiner	Christopher J. Nichols	
Title of Application:	Methods of Use of Fibroblast Growth Factor, Vascular Endothelial Growth Factor and Related Proteins in the Treatment of Acute and Chronic Heart Disease	

May 28, 2003

Mail Stop: AF  
 Commissioner for Patents  
 P. O. Box 1450  
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**REQUEST FOR CLARIFICATION AND/OR VACATION  
 OF OFFICE ACTION OF AND ISSUANCE OF A NEW OFFICE ACTION**

Sir:

Applicant received an Office Action dated March 20, 2003 (Paper No. 16). The Office Action Summary states that claims 16-43 and 47 are pending in the application. Of the above claim(s) 25-34 are withdrawn from consideration.... Claims 16-24 and 47 are rejected.

It appeared to the undersigned that claims 35-46 had been overlooked and a check of the record was carried out and showed the following:

1. As Filed	Claims 1-15
2. 8/8/01 Preliminary Amendment	Claims 1-15 cancelled and Claims 16-53 added
3. 6/16/02 Office Action (Paper No. 8)	Claims 16-53 Restriction Requirement 1. 16-24, 35-53 2. 25-27 3. 28-34
4. Office Action 9/18/02	Claims 25-34 withdrawn from consideration Claims 16-24 and 35-53 rejected
5. Amendment of 1/21/03	Claims 44-46 and 48-53 cancelled (claims remaining 16-24, 35-43 and 47)

6. Office Action of 3/20/03 (Paper No. 16) "Claims 16-43 and 47 are pending..  
claims 25-34 are withdrawn...  
claims 16-24 and 47 are rejected..."  
(Office Action Summary)  
at page 2 of the Office Action, claims 44-46  
and 45-53 have been cancelled.  
Claims 25-34 remain withdrawn... Claims 16-24 and 47  
are under examination.

It appeared clear that the Examiner had not included claims 35-46 in his action. At page 3, paragraph 7 thereof "Maintained Objections and/or Rejections", these claims are not referred to. Therefore, the rejection of claims 16-24 and 47 ... is maintained". (page 8).

At paragraph 24 of the Office Action, claim 47 was further rejected for improper dependency.  
Thus the Examiner has omitted any reference to claims 35-46.

The undersigned contacted Examiner Nichols who was absent from the office and then contacted Examiner Kunz who checked the file, solely on this issue, and agreed with the undersigned and suggested the procedure now undertaken.

Record is also made that Examiner Nichols returned the undersigned's call and agreed that through error these claims were not included, noting that they had been included in an earlier Office Action.

Because the Office Action of March 20, 2003 is a final rejection, the applicant is entitled to know exactly what claims are rejected and on what grounds so that a proper response can be formulated.

It is believed under these circumstances a new Office Action should be issued with a response time set to run from the date of its issue.

Respectfully submitted,

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